

ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND RECREATING RULES

Wisconsin Department of Corrections proposes an order to repeal and recreate Chapter DOC 306 relating to security.

Statutory authority: s. 227.11 (2), 301.02, 301.03(2), 302.07, Stats.

Statutes interpreted: s. 302.07, 302.08, and 302.04, Stats.

Analysis Prepared by the Department of Corrections

Some provisions of the department of corrections administrative rule relating to security have not been updated since the rule was created in 1980. With over 20 years of experience working with the rule, the department proposes to update the rule.

BACKGROUND

DOC 306 governs security standards and practices at state correctional institutions. As technology, science, population and government evolve over time, security standards and practices must adapt to those changes. We ultimately grow wiser and more efficient based on new knowledge and procedures. What was thought routine, necessary or even effective correctional practice in 1980 may not be accurate today.

For example, our prison population has grown from 1,930 in 1976 to more than 18,000 in 2000, and has a projected population of more than 20,600 currently. This enormous increase in prisoners, along with their increased level of sophistication, has placed a greater burden on correctional staff and has created the possibility for a more hazardous environment. In many ways, Wardens and staff no longer enjoy the luxury of time that once afforded them the ability to maneuver bureaucratic requirements. Correctional staff must now make urgent decisions regarding the best way to ensure staff, inmate and visitor safety and security. These situations and decisions are infinitely different from those of 20 years ago when the current rule was promulgated. The proposed changes in this rule make it possible for inmate rights and needs to be protected without compromising institution security.

DEFINITIONS

- Removes the definitions for “Director of the bureau of correctional health services,” “Administrator of the division of program services,” “Division of program services,” “CN chloroacetophenone and CS-o-chlorobenzyl malononitrile.”
- Adds definition of “Authority,” and “Issuance of firearms,” adds “X-ray” to definition of “body cavity search,” and adds “hair, fingernails, saliva, or semen” to definition of “body contents search.”

- Changes the terms “Voluntary Confinement” to “Protective Confinement,” “chemical agent” to “incapacitating agent,” and changes the definition of “Superintendent” to “Warden.”

REPORTS/RECORDS/PLANS

- Maintains requirement for institution plans regarding escape, but for security reasons, removes language specifying the contents of the plan.
- Maintains requirement for emergency preparedness and disturbance plans, but, for security reasons, deletes language detailing the contents.

PROTECTIVE CONFINEMENT

By removing the requirements that an inmate remain in protective confinement for at least 72 hours unless security director approves prior release and that the inmate be released automatically after the 72 hours, this rule clarifies that determining the length of stay in protective confinement is the security director’s role. In order to facilitate protection of inmates at risk, this rule removes the artificial figure of 72 hours and grants the security director the ability to regulate protective placement as long as the inmate remains at risk.

ISSUANCE AND USE OF FIREARMS

This rule allows an authority other than the Warden to issue firearms to staff and recognizes that circumstances arise within the institution where the warden may be unavailable at a time when firearms must be issued in order to maintain security. This proposed rule change provides a process whereby designated staff may have authority to act in the warden’s absence. DOC Security Internal Management Procedures and Emergency Preparedness Manual will specify the line of succession and circumstances under which firearms authorization may occur.

This rule requires that staff actions prior to discharging a firearm are consistent with mandated comprehensive and uniform training requirements.

INCAPACITATING AGENTS

Science changes so rapidly and now provides us with a wider variety of incapacitating agents that are often times safer and more effective in controlling inmates. Department Security Internal Management Procedures will provide a wider variety of situation-appropriate alternatives in a graduated force option continuum. We are no longer limited to the narrow selection of “chemicals” enumerated in the current rule and it is futile, given sciences speedy advances, to attempt to continue enumerating incapacitating agents within the rule.

To ensure safety and proper application, this rule requires that only trained staff use incapacitating agents and grants general authority for their use under certain circumstances. The current rule

reads so as to allow any staff member, even those not trained in the use of these agents, to use an incapacitating agent so long as it is done in the presence of a trained staff member. This proposed rule ensures that the staff member actually administering or using the agent is properly trained, thereby ensuring greater safety to those involved in the situation.

This rule requires that the Division of Adult Institutions provide incapacitating agent training which includes when incapacitating agents may and shall be used, safe handling, legal use, division policies and procedures, and fundamentals of use. In light of this requirement, the current language dictating the procedure for using incapacitating agents is unnecessary and is removed.

The rule adds the following as situations for which staff may use incapacitating agents:

- a. to apprehend an inmate who has escaped
- b. to change the location of an inmate
- c. to control a disruptive inmate
- d. to prevent unlawful damage to property
- e. to enforce a departmental rule, policy or procedure or an order of a staff member

MECHANICAL RESTRAINTS

This rule permits use of mechanical restraints to immobilize inmates for the protection of property. Occasionally, highly destructive inmates do considerable damage to state and personal property. For example, inmates already in segregation manage to destroy light fixtures, plumbing, electrical boxes, windows, etc. This type of destruction is not only costly, but obviously jeopardizes the welfare of staff and inmates. Such inmates also use this behavior to create weapons and escape confinement.

Recognizing a need in today's changing institutions, this rule permits Wardens the discretion in determining if security needs warrant use of mechanical restraints for movement within the institution. Situations in which the mechanical restraints are necessary for movement within the institution are too numerous and various to attempt listing in the rule. To do so would unnecessarily and unduly limit the ability of the Warden to ensure safety and security within the institution by responding to individual circumstances with the appropriate security measures. For example, mechanical restraints may be necessary during institution lock-downs, inclement weather such as severe fog, electrical blackouts, etc. There are a number of situations that may be unanticipated and due to circumstances beyond the Department's control. The Warden must have the ability to react in these situations.

ESCAPES

To ensure staff safety and limit liability, staff may no longer be authorized to use their own cars to pursue escapees.

SEARCH

The effectiveness and validity of a search is often dependent upon eliminating the requirement that inmates be given advance notice. Searches are considered a regular, necessary, and fundamental part of maintaining institution security and this rule removes the administratively burdensome requirement for housing unit supervisors or shift supervisors to authorize searches of inmate living quarters. This discretion is absolutely necessary in order to facilitate effective and efficient operation of security measures in our prisons. This provision will allow staff to address potentially dangerous situations more expediently.

The current rules allow inmates to conceal contraband under the guise of “legal material” by forbidding staff to read and review this alleged legal material. This rule will allow staff, during a living quarters search, to examine legal materials only to the extent necessary to determine that the item is, in fact, legal material and does not contain contraband.

This rule enumerates circumstances under which a strip search may be conducted and expands the reasons for conducting a body contents search. This rule adds “biological specimen analysis” as a valid reason to perform a body contents search in response to new laws allowing and/or requiring certain testing such as DNA.

This rule maintains the requirement that staff have reasonable grounds to search an inmate, but eliminates listed factors for staff to consider in deciding if reasonable grounds exist. Such factors will continue to be the subject of staff training and detailed in the department’s internal policies and procedures.

This rule deletes the arbitrary recommendations for consideration in determining whether or not to conduct a search. This determination is best left to the Department’s policies and procedures due to the changing circumstances and the variety of situations correctional staff encounter in today’s institutions.

This rule also deletes the requirement that the security director of each correctional institution submit monthly reports to the administrator regarding seized contraband. These reports continue to be maintained at institutions and the administrator has access to these reports on demand. This change merely ends the repetition in filing this report with the administrator. To continue keeping records at DOC Central Office, in addition to the institutions, would be redundant and an unnecessary use of time and resources.

VISITORS

Allows institutions the option to store visitors’ personal property that may not be carried into the institution. There may be instances when visitors have too much personal property to be securely stored given minimal space and resources available.

This rule requires Warden approval for strip searches or personal searches of visitors.

PERSONS UNDER THE INFLUENCE OF INTOXICATING SUBSTANCES

Occasionally, visitors are found with drugs, or become disruptive due to apparent influence of intoxicating substances. The Warden currently has statutory authority to arrest and detain under sec. 301.29(2) Wis. Stats. In practice, the Department does not have arresting protocols and therefore handles these procedures through law enforcement. This rule allows the Warden to deny a visit and to detain a visitor and inform law enforcement if the visitor appears to be under the influence of an intoxicating substance. This rule also allows the Warden to detain staff members who appear to be under the influence of an intoxicating substance, and to notify law enforcement.

SECTION 1. DOC 306 is repealed and recreated to read:

Chapter DOC 306

SECURITY

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| <p>DOC 306.01 Applicability and purpose.</p> <p>DOC 306.02 Definitions.</p> <p>DOC 306.03 Security policy.</p> <p>DOC 306.04 Responsibility of employees.</p> <p>DOC 306.05 Protective confinement.</p> <p>DOC 306.06 Inmate count.</p> <p>DOC 306.07 Use of force.</p> <p>DOC 306.08 Use of firearms.</p> <p>DOC 306.09 Use of incapacitating agents.</p> <p>DOC306.10 Use of mechanical restraints for transportation of inmates.</p> <p>DOC 306.11 Use of mechanical restraints to immobilize inmates.</p> <p>DOC 306.12 Duty of staff regarding escapes.</p> <p>DOC 306.13 Escapes.</p> | <p>DOC 306.14 Search of institution premises.</p> <p>DOC306.15 Periodic search of entire institution.</p> <p>DOC 306.16 Search of inmate living quarters.</p> <p>DOC 306.17 Search of inmates.</p> <p>DOC 306.18 Search of visitors.</p> <p>DOC 306.19 Search of staff.</p> <p>DOC 306.20 Use of contraband as evidence at disciplinary hearing.</p> <p>DOC 306.21 Use of test results as evidence at disciplinary hearing.</p> <p>DOC 306.22 Emergency.</p> <p>DOC 306.23 Disturbance.</p> <p>DOC306.24 Emergency preparedness plan.</p> |
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DOC 306.01 Applicability and purpose. Pursuant to authority vested in the department by ss. 301.02, 301.03 (2), 302.07 and 227.11 (2), Stats., the department adopts this chapter for purposes of establishing security standards and practices at state correctional institutions.

DOC 306.02 Definitions. In this chapter:

(1) “Administrator” means the administrator of the division or designee.

(2) “Authority” means the highest-ranking individual available in the institution, based on the written institution line of succession.

(3) “Bodily injury” means physical injury, illness, or any impairment of physical condition.

(4) “Deadly force” means force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.

(5) “Department” means the department of corrections.

- (6) “Disciplinary hearing” means a hearing authorized under ch. DOC 303 for the disciplining of inmates accused of misconduct.
- (7) “Disturbance” means any of the following:
- (a) An assault on any person by 2 or more inmates.
 - (b) The taking of a hostage by an inmate.
 - (c) The destruction of state property or the property of another by 2 or more inmates.
 - (d) The refusal by 2 or more inmates, acting in concert, to comply with an order.
 - (e) Any words or acts which incite or encourage inmates to do any of the above.
- (8) “Division” means the division of adult institutions, department of corrections.
- (9) “Emergency” means an immediate threat to the safety of the public, staff or inmates of an institution, other than a disturbance. An emergency may include, but is not limited to the following:
- (a) A public health threat.
 - (b) A utility malfunction.
 - (c) A fire.
 - (d) A bomb threat or explosion.
 - (e) An employee job action.
 - (f) Any natural disaster.
 - (g) A civil disturbance.
 - (h) Inmate escape.
- (10) “Force” means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way.
- (11) “Great bodily injury” means bodily injury which creates a high probability of death, serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.
- (12) “Institution” means a correctional institution, correctional facility, or center or a prison defined under intensive sanctions in ch. DOC 333 or a facility that the department contracts with for services to inmates.
- (13) “Mechanical restraint” means a commercially manufactured device approved by the department and applied to impede free movement of the inmate.
- (14) “Non-deadly force” means force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury to another.
- (15) “Reasonably believes” means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable.
- (16) “Secretary” means the secretary of the department of corrections, or designee.
- (17) “Security director” means the security director at an institution, or designee.
- (18) “Warden” means the warden at an institution, or designee.

DOC 306.03 Security policy. Primary security objectives of the department are to protect the public, staff, and inmates and to afford inmates the opportunity to participate in correctional activities in a safe setting.

DOC 306.04 Responsibility of employees. Every employee of the

department is responsible for the safe custody of the inmates confined in the institutions.

DOC 306.05 Protective confinement.

(1) The security director may place an inmate in protective confinement if one of the following exist:

(a) The inmate requests the placement in writing.

(b) The security director is satisfied that the placement is necessary for the safety and welfare of the inmate.

(2) An inmate shall remain in protective confinement unless the security director determines that the conditions which warranted protective confinement no longer exist and approves release.

(3) The department shall consider an inmate in protective confinement to be in maximum custody as defined in ch. DOC 302.

(4) (a) Inmates in protective confinement shall have privileges and property at least equivalent to privileges and property allowed to inmates in program segregation under s. DOC 303.70.

(b) Additional privileges and property as determined by what is ordinarily allowed inmates by the rules governing the location of the unit in which the inmate is protectively confined.

(5) The security director shall review placements in protective confinement at least every 90 days.

DOC 306.06 Inmate count. Each warden shall establish and maintain a system to accurately account for all inmates in the warden's custody at all times. The institution shall make a count of all inmates at least 4 times each day. The institution shall space these counts to minimize interference with school, work, program, and recreational activities.

DOC 306.07 Use of force. (1) Corporal punishment of inmates is forbidden.

(2) Staff may use non-deadly force against inmates only if the user of force reasonably believes it is immediately necessary to realize one of the following purposes:

(a) To prevent death or bodily injury to oneself or another.

(b) To regain control of an institution or part of an institution.

(c) To prevent escape or apprehend an escapee.

(d) To change the location of an inmate.

(e) To control a disruptive inmate.

(f) To prevent unlawful damage to property.

(g) To enforce a departmental rule, a policy or procedure or an order of a staff member.

(3) The use of an incapacitating agent is a form of non-deadly force and is regulated by s. DOC 306.09.

(4) Staff may use deadly force only if the user of force reasonably believes it is immediately necessary for the purpose of stopping the action and achieving the following:

(a) Preventing death or bodily injury to oneself or another.

(b) Preventing unlawful damage to property that may result in death or bodily injury to oneself or another.

(c) Regaining control of an institution or part of an institution.

(d) Preventing escape or apprehend an escapee.

(5) Staff may not use deadly force if its use creates a substantial danger of harm to innocent third parties, unless the danger created by not using such force is greater than the danger created by using it.

DOC 306.08 Use of firearms. (1) In this section, “Issuance of firearms” means the deployment of firearms to authorized individuals, as determined by the warden, beyond designated armed posts in response to an emergency or disturbance.

(2) Only the warden or authority who is available may issue firearms to staff.

(3) Except in disturbances or emergencies, only staff assigned to posts requiring the use of firearms shall possess a firearm.

(4) Staff may only use firearms approved by the department and only after successfully completing the training program in sub. (5).

(5) The division shall provide an annual firearms training and qualification program which shall include instruction on the following:

- (a) Safe handling of firearms while on duty.
- (b) Legal use of firearms and the use of deadly force.
- (c) Division policies and procedures regarding firearms.
- (d) Fundamentals of firearms use, including range firing.
- (e) When firearms may and shall be used, including the use of verbal warnings and warning shots.

(6) If a staff member discharges a firearm pursuant to s. DOC 306.07(4), either accidentally or intentionally, the following procedure shall be followed:

- (a) The staff member who discharged the firearms shall notify his or her supervisor as soon as possible and shall write and submit an incident report.
- (b) A supervisor shall investigate the incident and submit a report to the warden. The

supervisor shall state in the report all facts relevant to the discharge of the firearm and shall include the supervisor’s opinion as to whether the discharge was justified and occurred in accordance with this chapter. The warden shall send the reports required by par. (a) and this paragraph and the warden’s conclusions as to the justification for the discharge and whether it was in accordance with these rules to the administrator.

(c) If a person is injured or killed by the discharge of a firearm, the department shall convene a firearm review panel to investigate the incident. The panel shall consist of 5 persons selected as follows:

1. Two members designated by the secretary, one of whom shall be a member of the public and one of whom shall be a member of the department staff who shall serve as chairperson.

2. Two members designated by the administrator, one of whom shall be a member of the central office staff and one of whom shall be a member of the public.

3. One member designated by the warden of the institution where the incident occurred, who is a member of the institution staff.

(d) The panel shall submit a written report to the secretary that includes the facts relevant to the incident and an opinion as to whether this chapter was complied with relating to the use of force.

(7) Only staff authorized by the warden may carry firearms off the institution premises.

DOC 306.09 Use of incapacitating agents. (1) DEFINITION. In this section “incapacitating agent” means any agent or device commercially manufactured and approved by the department for the purpose of temporary control of an inmate or area.

(2) REGULATION. The use of an incapacitating agent is a form of non-deadly force and is regulated by this section.

(3) AUTHORIZATION. Staff may use incapacitating agents in any of the following situations:

- (a) To prevent death or bodily injury to oneself or another.
- (b) To regain control of an institution or part of an institution.
- (c) To prevent escape or apprehend an escapee.
- (d) To change the location of an inmate.
- (e) To control a disruptive inmate.
- (f) To prevent unlawful damage to property.
- (g) To enforce a departmental rule, policy or procedure or an order of a staff member.

(4) APPLICATION. Only a staff member trained under sub. (5) may use an incapacitating agent.

(5) TRAINING. The division shall provide an incapacitating agent training program that shall include instruction on the following:

- (a) Safe handling of incapacitating agents while on duty.
- (b) Legal use of incapacitating agents.
- (c) Division policies and procedures regarding incapacitating agents.
- (d) Fundamentals of use of incapacitating agents.
- (e) When incapacitating agents may and shall be used.

(6) MEDICAL ATTENTION AND CLEAN-UP. As soon as possible after an incapacitating agent has been used, staff shall provide exposed inmates an opportunity for any necessary hygienic needs and shall consult with medical

staff who shall provide any appropriate medical care.

(7) INCIDENT REPORT. As soon as possible following the use of an incapacitating agent, staff shall write and submit incident reports to their supervisor describing:

- (a) The problem leading to the use of the incapacitating agent;
- (b) The steps taken prior to the use of the incapacitating agent;
- (c) Why those steps were inadequate;
- (d) Measures taken following the use of the chemical agent.

DOC 306.10 Use Of mechanical restraints for transportation of inmates.

(1) AUTHORIZATION. Staff members may use mechanical restraints if the warden determines that the use of mechanical restraints is necessary to protect the public, staff or other inmates or to maintain the security of the institution.

(2) MOVEMENT WITHIN INSTITUTION. Staff may use mechanical restraints in the following situations if the warden determines that the use of mechanical restraints is necessary to protect the public, staff or other inmates or to maintain the security of the institution:

- (a) In transporting an inmate from within the institution to outside the institution.
- (b) In transporting an inmate to segregation or temporary lock-up status.
- (c) For an inmate who is in segregation or temporary lock-up status, while the inmate is outside his or her cell.
- (d) For other security reasons as determined by the warden.

(3) MOVEMENT OUTSIDE INSTITUTION. Staff may use mechanical restraints in transporting an

inmate outside an institution, in accordance with s. DOC 302.12.

DOC 306.11 Use of mechanical restraints to immobilize inmates. (1)

Staff may use mechanical restraints to confine inmates only with the express authorization of the shift supervisor and only in the following circumstances:

(a) To protect staff and inmates from an inmate who poses an immediate risk of physical injury to others unless restrained.

(b) To protect an inmate who poses an immediate threat of physical injury to self unless restrained.

(c) To protect property.

(2) Staff may not use mechanical restraints:

(a) As a method of punishment.

(b) In a way that causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the inmate.

(3) When staff places an inmate in a mechanical restraint, staff shall follow all of the following procedures:

(a) The shift supervisor shall notify the licensed psychologist or designee acting under the supervision of the licensed psychologist, or a psychiatrist, and a member of the medical staff. They shall interview the inmate and arrange for a physical and mental examination as soon as possible. They shall make recommendations to the warden concerning the inmate's continued placement in restraints. The warden shall evaluate the recommendations and decide if the inmate shall remain in restraints.

(b) A staff member shall observe an inmate in restraints every 15 minutes.

(c) If possible, staff may release an inmate from restraints to perform bodily

functions and for meals. Three staff members, one of whom shall be a security supervisor, shall be present at the time of release.

(d) The institution shall keep a record of inmates placed in restraints and it shall include:

1. The inmate's full name, number, and date;
2. The names of the staff members and supervisor present when the inmate was placed in restraints;
3. The reasons for placing the inmate in restraints;
4. The times that the inmate was checked, the name of the person making the check, and comments on the individual's behavior while in restraints;
5. The times the inmate was placed in restraints and removed; medication given; and
6. The names of staff visitors, the times of their visits, and any written comments they make.

(e) The warden shall not allow an inmate to remain in restraints for longer than 12 hours, unless the inmate is examined by a licensed psychologist or a designee acting under the supervision of the licensed psychologist, or a psychiatrist, and a member of the medical staff who shall make a recommendation to the warden concerning the inmate's continued placement in restraints. The institution shall conduct such an examination at least every 12 hours an inmate is in restraints. The warden shall notify the administrator of the decision to continue the use of restraints beyond 12 hours.

(4) The security director shall maintain a supply of restraining devices which staff shall periodically examine.

DOC 306.12 Duty of staff regarding escapes. Staff shall take actions to prevent the escape of any inmate.

DOC 306.13 Escapes. (1) Each institution shall have a written plan to be implemented if an escape occurs or is attempted. The security director shall prepare this plan and shall review and update the plan yearly. A copy of the plan shall be filed with the administrator.

(2) As soon as possible following an escape, staff shall write and submit incident reports including:

- (a) The method of escape;
- (b) Who was involved in the escape;
- (c) A description of the escapee, including clothing worn;
- (d) Action taken by the institution, including procedures initiated;
- (e) Factors which may have contributed to the escape; and
- (f) The identification of persons who may have information about the escape.

(3) If a staff member is taken as a hostage in an escape or escape attempt, that hostage has no authority to order any action or inaction by staff. Staff shall disregard any orders issued by a hostage.

(4) The institution shall coordinate the pursuit of escapees with law enforcement authorities.

DOC 306.14 Search of institution premises. A staff member may conduct a search of any area on the premises of a correctional institution.

DOC 306.15 Periodic search of entire institution. Warden may suspend or modify institution operations and authorize a search of all or part of institution premises.

DOC 306.16 Search of inmate living quarters. (1) Staff may conduct a search of the living quarters of any inmate at any time. Entry into the living quarters of an inmate by a staff member to retrieve state property does not constitute a search of the living quarters of an inmate.

(2) The institution shall maintain a written record of all searches conducted under sub. (1), which shall include:

- (a) The identity of the staff member who conducted the search;
- (b) The date and time of the search;
- (c) The identity of the inmate whose living quarters were searched;
- (d) The reason for conducting the search. If the search was a random one, the report shall so state;
- (e) Any objects which were seized pursuant to the search; and
- (f) Whether any damage was done to the premises during the search.

(3) If staff seize any property or damage any property pursuant to the search of an inmate's living quarters, staff shall identify the property to the inmate in writing. The institution shall reimburse the inmate for damage to any property that is not contraband. The institution shall value any property which is damaged at its fair market value, not replacement cost.

(4) In conducting searches under this section, staff shall disturb the effects of the inmate as little as possible, consistent with thoroughness.

(5) Staff shall read only that part of the inmate's legal materials as necessary to determine that the item is legal material and does not contain contraband.

DOC 306.17 Search of inmates. (1) PERSONAL SEARCH. (a) In this subsection,

“personal search” means a search of a person, including, but not limited to, the clothing, frisking the body, and an inspection of the mouth.

(b) Any staff member may conduct a personal search of an inmate under any of the following circumstances:

1. If the staff member has reasonable grounds to believe that the inmate possesses contraband.
2. At the direction of a supervisor either verbally or in written job instructions, post orders, or policies and procedures.
3. Before an inmate enters or leaves the security enclosure of a maximum or medium security institution or the grounds of a minimum-security institution.
4. Before an inmate enters or leaves the segregation unit or changes status within the segregation unit of an institution.
5. Before and after a visit to an inmate or as part of a periodic search or lockdown of a housing unit.

(2) STRIP SEARCH. (a) In this subsection, “strip search” means a search in which the person is required to remove all clothes.

(b) Permissible inspection pursuant to a strip search includes examination of the inmate’s clothing and body and visual inspection of body cavities. Staff shall conduct a strip search in a clean and private place. Any staff member may conduct a visual inspection of body cavities. Except in emergencies, a person of the same sex as the inmate being searched shall conduct the strip search.

(c) Staff may conduct a strip search of an inmate under any of the following circumstances:

1. Before an inmate leaves or enters the security enclosure of a maximum or medium security institution or the grounds of a minimum-security institution.
2. Before an inmate enters or leaves the segregation unit or changes status within the segregation unit of an institution.
3. Before and after a visit under ch. DOC 309.
4. As part of a periodic search and lockdown of an institution under s. DOC 306.15.
5. At the direction of a supervisor.

(3) BODY CAVITY SEARCH. (a) In this subsection, “body cavity search” means an x-ray, or a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

(b) Medical staff shall conduct body cavity searches. Medical staff may conduct a body cavity search only if the warden approves. The warden shall approve if there is probable cause to believe that contraband is hidden in a body cavity.

(4) BODY CONTENTS SEARCH. (a) In this subsection, “body contents search” means a search in which the inmate is required to provide a biological specimen, including, but not limited to a sample of urine, breath, blood, stool, hair, fingernails, saliva, or semen for analysis.

(b) Only assigned staff may obtain samples as part of a body contents search.

(c) Staff may conduct a body contents search only under one of the following conditions and only after approval by the warden:

1. Security reasons.

2. Program reasons.
3. Investigation purposes.
4. As part of a random testing program.
5. As required by a court for deoxyribonucleic acid or DNA analysis under s. 973.047, Stats., or any other biological specimen analysis.

(5) STAFF CONDUCT. (a) Staff shall strive to preserve the dignity of inmates in all searches conducted under this section.

(b) Before a search is conducted pursuant to this section, staff shall inform the inmate that a search is about to occur, the nature of the search, and the place where the search is to occur.

(6) Staff shall write and submit to the security director an incident report or log entry following all strip searches under sub. (2) (c) 4, of all body cavity searches under sub. (3), of all body contents searches under sub. (4) and of all searches in which contraband is found. The report or entry shall include:

- (a) The identity of the staff member who conducted the search;
- (b) The date and time of the search;
- (c) The identity of the inmate searched;
- (d) The reason for the search. If the search was a random search, the report shall so state;
- (e) Any objects seized pursuant to the search; and
- (f) The identities of other staff members present when the search was conducted.

DOC 306.18 Search of visitors. (1)

Before a visit by a non-inmate to an institution is permitted, the staff member responsible for the admission of visitors shall be satisfied that the visitor is not carrying any unauthorized objects into the institution.

(2) The institution shall have information readily available to visitors informing them of the objects they may carry into the institution. The institution may provide a place for the safekeeping of objects that may not be carried into the institution.

(3) Before admitting a visitor, the staff member responsible for admission may require the visitor to empty pockets and containers, permit the inspection of containers and submit the visitor and objects carried by the visitor into the institution to inspection by a device designed to detect metal or other unauthorized objects.

(4) The warden may require a visitor to submit to a personal search or strip search as defined in s. DOC 306.17 (1) and (2) prior to entering the institution. The staff member may conduct such a search only with the approval of the warden, who shall require the search only if there are reasonable grounds to believe the visitor is concealing an unauthorized object.

(5) The staff member shall write a report if the visitor refuses to submit to a search or if the search is conducted, and shall submit the report to the security director, with a copy to the warden and the administrator. The report shall include:

- (a) The identity of the staff member and the person who approved the search;
- (b) The identity of the visitor and the inmate being visited;
- (c) The date and time of the search or proposed search;
- (d) The reason for the request to permit a search which shall include the basis for

the belief that unauthorized objects were concealed by the visitor; and

- (e) Whether unauthorized objects were seized pursuant to the search and their description.

(6) Before an inspection or search is conducted pursuant to subs. (3) and (4) staff shall inform the visitor orally and in writing, either by a sign posted in a prominent place or on a notice, that the visitor need not permit the inspection or search and that if the visitor does not permit it, staff shall not admit the visitor to the institution at that time.

(7) If in an inspection pursuant to sub. (3) or a search under sub. (4) staff finds an unauthorized object, staff may deny the visitor the visit to the institution on the occasion, may suspend the visitor from further visits to the institution, or may allow the visit without the object.

(8) If the institution finds an unauthorized object pursuant to a search under this section, and it is illegal to conceal or possess the object, the warden shall inform a law enforcement agency and turn the object over to the law enforcement agency for referral to the district attorney pursuant to ss. 302.04 and 302.07, Stats. and deny the visit. If the institution determines that the visitor appears to be under the influence of an intoxicating substance, the warden shall deny the visit, may detain the visitor, and may inform a law enforcement agency.

(9) Staff shall conduct all inspections and searches in a courteous manner. Staff shall strive to protect the dignity of visitors who are inspected or searched pursuant to this section.

DOC 306.19 Search of staff. **(1)** The warden may require that a staff member be searched while on the grounds of an institution or require that a staff member's car be searched while on institution grounds. The institution may conduct such a search by requiring the

staff members to empty pockets and containers and submit themselves and objects they carry into the institution to inspection by a device designed to detect metal or other unauthorized objects, a personal search, or a strip search, as defined under s. DOC 306.17 (1) and (2). Before a strip search of a staff member or the search of a staff members' vehicle is conducted, the warden and the administrator shall approve the search. They shall approve the search only if there are reasonable grounds to believe the staff member is concealing an unauthorized object. The institution shall not admit a staff member who refuses to submit to a search into the institution or may remove such a staff member from the institution and may subject the staff member to disciplinary action.

(2) If an unauthorized object is found pursuant to a search conducted under this section and it is illegal to conceal or possess the object, the warden may detain the staff member pursuant to ss. 302.04 and 302.07, Stats., and shall inform a law enforcement agency and turn the object over to the sheriff or law enforcement agency for referral to the district attorney. If the warden determines that the staff member appears to be under the influence of an intoxicating substance, the warden may detain the staff member and may inform a law enforcement agency.

(3) Staff shall conduct all searches in a courteous manner. Staff shall strive to protect the dignity of staff who are inspected or searched.

(4) Each institution shall inform staff in writing what objects they may not carry into the institution.

(5) If a strip search is conducted pursuant to this section, the staff member conducting the search shall write and submit a report to the security director. The security director shall provide a copy of the report to the warden and the administrator.

DOC 306.20 Use of contraband as evidence at disciplinary hearing.

Contraband that is seized during a search under this chapter may be used as evidence by the institution at a disciplinary hearing conducted under ch. DOC 303.

DOC 306.21 Use of test results as evidence at disciplinary hearings.

Subject to the confirmation required under s. DOC 303.59 (2), the institution may use results of physical examinations and tests performed on body content specimens for the purpose of detecting intoxicating substances as evidence at a disciplinary hearing conducted pursuant to ch. DOC 303.

DOC 306.22 Emergency. (1) If an emergency occurs that prevents the normal functioning of the institution, the warden may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.07 to 306.09, until the emergency is ended and order is restored to the institution.

(2) If an emergency occurs, the secretary may convene an emergency review panel to investigate the emergency. The panel shall be made up of persons selected in accordance with s. DOC 306.08 (5) (d). The panel shall submit a written report to the secretary that includes the facts relevant to the incident and an opinion as to whether this chapter was complied with relating to an emergency. The department shall provide the panel with staff adequate to conduct a thorough investigation of the emergency.

DOC 306.23 Disturbance. (1) If a disturbance occurs that prevents the normal functioning of the institution, the warden may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.07 to 306.09, until the disturbance is ended and order is restored to the institution. The warden shall make provisions for access to medical care.

(2) If a disturbance occurs and a person is injured and if it results in the suspension of these rules, the secretary may convene a disturbance review panel to investigate the disturbance. The secretary shall appoint the panel in accordance with s. DOC 306.08 (5) (d) and the panel shall submit a written report to the secretary that includes the facts relevant to the incident and an opinion as to whether this chapter was complied with relating to a disturbance. The department shall provide the panel with staff adequate to conduct a thorough investigation of the disturbance.

(3) A staff member taken hostage has no authority to order any action or inaction by staff.

DOC 306.24 Emergency preparedness plan. (1) The warden shall ensure that the institution has a written emergency preparedness plan for disturbances and emergencies and that a copy of the plan is filed with the administrator and implemented in a disturbance or an emergency.

(2) The purposes of the written emergency preparedness plan for disturbances and emergencies shall be:

(a) To ensure the safety and welfare of the general public, staff, and inmates.

(b) To protect property.

(c) To protect property.

(d) To maintain and restore order to the institution.

(e) To identify any person who participated in the disturbance, to provide for disciplinary action to be taken according to these rules, and to provide relevant information to a law enforcement agency so that participants can be arrested and prosecuted.

(f) To identify any person who contributed to the creation of an emergency and to provide this information to a law enforcement agency for the person's arrest and prosecution.

(3) The plan shall give the highest priority to insuring the safety and welfare of the general public, staff, and inmates.

SECTION 2. DOC 306 Appendix is repealed and recreated to read:

Chapter DOC 306

APPENDIX

Note: DOC 306.05. Some inmates wish to be confined because they fear for their safety. Protective confinement is permitted by this rule.

Maximum custody is used in this case for the inmate's safety. Because the status is not punitive, DOC attempts to provide normal property and privileges consistent with the place where the confinement occurs, but the inmate shall be allowed at least the privileges and property allowed in program segregation.

Note: DOC 306.06. Accurate counts are essential for security and recordkeeping. Given the variety among institutional schedules, each warden is given the responsibility to see to it that an accurate system exists and that it does not unduly interfere with programs.

Note: DOC 306.07. DOC 306.07 states the purposes for which non-deadly force and deadly force may be used.

Situations arise in prison that must be controlled before substantial danger to others arises. The requirements for discipline and order in a prison and to prevent an escape give substantial responsibility to prison officials that may require the use of force to fulfill.

Sub. (2) states the circumstances in which non-deadly force may be used in a prison. This rule applies to correctional staff and not inmates. Inmates are not authorized to use force at any time by this rule.

A typical situation in which a correctional staff member would be authorized to use force in defense of another is if there was a fight between or among inmates. The correctional staff member must be authorized to use force to stop the fight. In so doing, it might be necessary to use force against someone who is not unlawfully interfering with another but who is lawfully defending himself or herself. This is so because, in a prison setting, correctional staff must have the authority to prevent disturbances without worrying about who is wrongfully fighting and who is acting in self-defense.

Sub. (2) (d) authorizes the use of force to change the location of an inmate. Occasionally, an inmate is ordered to be placed in a segregation unit and refuses to go. To maintain the orderly operation of the institution, staff may have to physically move an inmate from one place to another.

Sub. (2) (g) authorizes the use of force to enforce department rules, policies and procedures and staff member orders. A typical situation in which a correctional officer would be authorized to use force under this paragraph is if an inmate refuses to be strip-searched prior to entering the segregation unit. Without the strip search the inmate could be hiding a weapon that could be used by a self-destructive inmate to kill or severely injure himself or herself or someone else. If the inmate cannot be persuaded to obey the order, staff may use force to compel compliance.

Note: DOC 306.08. The use of firearms is subject to the limitations on the use of force in DOC 306.07. This section reflects present policy of the department of corrections. Correctional staff in daily contact with inmates are not armed. Rather, officers who are posted in towers and in control centers are the only staff who are issued firearms, unless there is a disturbance or an emergency. Sub. (3).

Sub. (6) provides for the investigation of incidents in which a weapon is discharged. This investigation is for the purpose of administrative review and is not intended to take the place of an investigation conducted by another government agency.

Sub. (6) provides for investigation and reporting through the normal chain of command and for investigation and reporting by a special panel when anyone is killed or wounded by a firearm discharge. Because of the seriousness of such an event, it is desirable to include on the panel people from outside the department of corrections to insure that the investigation is conducted with the necessary objectivity.

Sub. (7) indicates that the warden must authorize staff before they may carry firearms off grounds. Correctional staff officers need not be deputized since "Correctional staff have authority and possess the power of a peace officer in pursuing and capturing escaped inmates." (OAG 103-79).

Note: DOC 306.09. DOC 306.09 authorizes and regulates the use of incapacitating agents in adult correctional institutions.

As stated in sub. (2), this section regulates the use of incapacitating agents. Because incapacitating agents pose a risk of injury to others, staff may only use them in limited situations.

Subsection (3) identifies situations in which incapacitating agents may be used. Under this subsection, incapacitating agents may be used to regain control of an institution or part of an institution over which physical control has been lost during an emergency, DOC 306.02 (9), or disturbance, DOC 306.02 (7). "Part of an institution" may be a building or a small area like a room. Whether an incapacitating agent should be used in such a situation depends upon whether using the incapacitating agent is less hazardous for both the person seeking to use the incapacitating agent and the inmate than using other reasonable means to accomplish the purpose.

This rule requires appropriate medical care, if necessary, and an opportunity for hygienic care. "Exposed inmates" are not just those against whom the agent is used but those exposed to it because they are nearby. Medical examinations and cleaning may minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks to the health of inmates from the residue of incapacitating agents as well as the discomfort they may cause.

The incident report for incapacitating agents in sub. (7) ensures adequate administrative notification and review of the use of incapacitating agents.

Note: DOC 306.11. DOC 306.11 regulates the use of restraints to immobilize inmates. Restraining devices are permitted in three situations: to protect property; to protect others from an inmate; and to protect an inmate from himself or herself. The use for transporting is regulated by DOC 306.10. While the use of restraints is never pleasant, it is sometimes more humane than other measures for controlling dangerous or disturbed people. DOC 306.11 is designed to insure that restraining devices are used only when necessary, to regulate their use to insure that they are used humanely, and to adequately provide for the safety of inmates and correctional staff.

It is important that the authority to require restraining devices be centralized. For this reason, only the warden may order their continued use or removal after review of psychological or medical staff reports. Sub. (3) (a).

To avoid injury, it is necessary to have adequate staff to subdue the inmate.

Inmates placed in restraints are typically in need of counseling, time to calm down, and periodic monitoring to insure that the person is not being injured by the restraints. Furthermore, the decision to keep a person in restraints must be continually reviewed. Sub. (3) (a) and (b) provide for medical exams and monitoring to get the inmate the immediate help he or she needs that may permit the removal of the restraints, as well as a review of the necessity for them.

Sub. (3) (c) provides for the removal of the restraints for meals and to perform bodily functions when possible. This is to preserve the inmate's dignity, consistent with the safety of the inmate and staff.

Sub. (3) (e) requires an examination by a licensed psychologist or a designee acting under the supervision of a licensed psychologist, or a psychiatrist, and a member of the medical staff every 12 hours an inmate remains in restraints. This is to provide expert judgment about the need for restraints and to provide additional mental health services to the inmate.

Sub. (4) requires that DOC shall maintain and periodically review a supply of restraining devices. This is to insure that devices that might injure an inmate or permit escape are not used.

Note: DOC 306.12. DOC 306.12 states the general policy that it is the responsibility of each staff member to take appropriate actions to prevent escapes. Appropriate action may include being alert and diligent, reporting observations and events, and may also include taking physical actions consistent with directed duty and training. Decisive action when signs of trouble exist is also important.

Note: DOC 306.13.

Sub. (3) states that no hostage, no matter what his or her rank, has any authority while a hostage. A person under such stress cannot be expected to make decisions that affect himself or herself, the institution, or inmates. To permit a person to retain authority while a hostage is an invitation to take high ranking officials as hostages.

Note: DOC 306.14. DOC 306.14 authorizes the search of institution premises at any time. Contraband, including drugs and weapons, are sometimes concealed in areas of general access,

in workshops and in classrooms. Searches turn up contraband and also serve as a deterrent to bringing contraband into institutions.

Such searches must be performed randomly so that inmates may not move the contraband in anticipation of a search. DOC is not required to give a specific reason for conducting a search.

Note: DOC 306.15. DOC 306.15 permits that each institution may be completely searched periodically. DOC has discovered contraband during these searches. This has convinced correctional officials of the desirability of such searches and of random area searches

These searches are to include the living quarters of inmates as good correctional practice.

Note: DOC 306.16. The search of the living quarters of an inmate is of importance to correctional officials and inmates. It is important that random searches of living quarters be conducted because contraband, including drugs and objects fashioned into dangerous weapons, are sometimes discovered during such searches and such searches deter the possession of contraband.

Contraband is a direct threat to the safety of staff and the institution as a whole. Weapons can be used against staff as well as inmates and may be an inducement to cause a disturbance that threatens everyone in the institution.

DOC conducts its searches unannounced so that inmates do not have the opportunity to remove contraband from the living unit. Various means may be used to conduct searches, including the use of canines and other available technological methods.

DOC staff conduct searches in a manner which demonstrates respect for an inmate's personal property. DOC staff shall notify inmates of any objects that are seized.

Note: DOC 306.17. DOC 306.17 is primarily directed to controlling the entry of contraband, including intoxicating substances, into correctional institutions and its movement within institutions. Visitors or inmates who go outside may carry contraband into institutions. Contraband is transported by inmates within institutions and is frequently moved to avoid detection. Contraband, including money illegally obtained, is also removed from institutions. Much of this contraband poses a threat to inmates, to correctional treatment, to staff, and to the very institution itself. See the note to DOC 306.16.

Body contents searches and urinalyses in particular are directed at controlling inmate use of intoxicants. Drug and alcohol use promotes the illegal entry, movement and selling of contraband within institutions and provides financial incentives which may corrupt other inmates and staff. Body contents searches and subsequent testing of those specimens are effective means to detect illicit use of drugs and alcohol. Test results may form the basis for disciplinary action, the prospect of which should deter inmates from using intoxicants or bringing them into the institutions.

Because inmates bring contraband in and out of institutions, it is necessary to permit strip searches upon entry and exit.

DOC places inmates in segregation units because they have committed a serious violation of prison rules, or because they are dangerous or disturbed. With this need for a heightened level of security, it is essential to the safety of inmates that contraband not be brought into a segregation unit. Strip searches of inmates as they move in or out of the segregation unit are necessary for security.

Sub. (2) (c) 3. authorizes strip searches prior to and after a visit. Frequently, visitors are not restricted to the visiting area during visits. Either the authority must exist to permit the search of visitors and inmates, or contact with visitors must be limited.

Sub. (2) (c) 4. authorizes strip searches during a search of an entire institution or a part of an institution during a lockdown. Without strip searches during a lockdown, inmates can conceal contraband on their persons and defeat the purpose of the search under s. DOC 306.15.

Sub. (2) (c) limits staff members' discretion to conduct strip searches.

Sub. (4) (c) describes the circumstances under which a body contents search may be conducted. The division of adult institutions is expected to develop a protocol to define the role of health staff and their obligations under these rules for both body cavity and body contents searches. When possible, less invasive means of screening for contraband will be employed before involving health care staff.

Note: DOC 306.18. DOC 306.18 regulates the search of visitors. Other rules relating to visits are found under ch. DOC 309.

Sub. (1) states the principle that correctional staff must be satisfied that visitors are not carrying unauthorized objects into the institution. Because such objects may be things which people normally carry with them and which visitors might assume are authorized, it is important to inform visitors of what they may or may not carry. If space is available, visitors may be provided with a place to store their belongings during the visit. Sub. (2).

If a visitor does not wish to submit to an inspection or search, the visitor need not do so. This will result in the visitor not being permitted to enter the institution on this occasion. No authority exists independently to require visitors to submit to inspections or searches. However, the responsibility for the safety of the institution does permit visitors to be excluded if they refuse to submit to inspections and, in the rare cases when they are conducted, personal searches.

The large majority of visitors are asked to empty pockets, permit the inspection of containers and submit to a metal detector screening similar to those used in airports. Sub. (3). This typically satisfies staff that contraband is not concealed. Occasionally, correctional staff has received information that a visitor is carrying contraband and that the inspection called for in sub. (3) will not detect it. If there are reasonable grounds to believe a visitor is carrying contraband, the warden may require the visitor to submit to a personal search or strip search as defined in DOC 306.17 (1) (a) and (2) (a) or be excluded from the institution.

Sub. (7) states the rule that visitors shall be excluded from the institution if they attempt to bring contraband into the institution. The visiting privilege itself may be suspended, as provided in ch. DOC 309. It is not the intention of the rule to exclude people who unwittingly carry unauthorized objects.

Sub. (8) requires correctional staff to turn over to law enforcement such objects that it is illegal to possess or conceal. The warden is a peace officer within the institution and on institution grounds by virtue of 301.29 (2), Stats. Under s. 939.22 (22), Stats., “peace officer” means any persons vested by law with a duty to maintain public order or to make arrest for crimes, whether that duty extends to all crimes or is limited to specific crimes. Section 302.095, Stats., makes delivering articles to inmates a crime subject to being detained by staff and turned over to the sheriff or local law enforcement officers. (OAG-103-79).

Note: DOC 306.19. Searches of staff members are sometimes necessary. Staff members may inadvertently bring unauthorized objects into institutions. For example, an employee taking medication may bring in more than he or she needs for an 8-hour period. Also, inmates may threaten staff or their families and thereby attempt to force the staff member to bring contraband into an institution. In addition, a staff member may deliberately bring an unauthorized object into an institution.

Note: DOC 306.23.

Sub. (1) permits the suspension of the rules of the department. It is not intended that this rule be relied on frequently, but only in situations where the usual functioning of the institution becomes impossible. For example, programs and visits are impossible if a portion of an institution is taken over by inmates. Some rules, like those relating to the use of force, may never be suspended. This is provided for in the rule.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22 (2) Stats.

Wisconsin Department of Corrections

Dated: _____

By: _____
Jon Litscher
Secretary

SEAL: